

Exhibit C

1 NEIL A. GOTEINER (State Bar No. 083524)
ngoteiner@fbm.com
2 C. BRANDON WISOFF (State Bar No. 121930)
bwisoff@fbm.com
3 JESSICA NALL (State Bar No. 215149)
jnall@fbm.com
4 ELIZABETH A. DORSI (State Bar No. 282285)
edorsi@fbm.com
5 FARELLA BRAUN + MARTEL LLP
235 Montgomery Street, 17th Floor
6 San Francisco, California 94104
7 Telephone: (415) 954-4400
Facsimile: (415) 954-4480

8 *Attorneys for Defendants*
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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12 **(SOUTHERN DIVISION)**

13 COMMODITY FUTURES TRADING
COMMISSION,

14 Plaintiff,

15 vs.

16 MONEX CREDIT COMPANY,
17 MONEX DEPOSIT COMPANY,
NEWPORT SERVICES
18 CORPORATION, MICHAEL
CARABINI, AND LOUIS CARABINI,

19 Defendants.
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Case No. 8:17-cv-01868-JVS-DFM

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Filed Concurrently with Defendants'
Opposition to Motion for Preliminary
Injunction

The Hon. James V. Selna
Dept. 10C
Date: March 19, 2018
Time: 3:00 p.m.

1 Defendants Monex Credit Company, Monex Deposit Company, Newport
2 Services Corporation, Michael Carabini and Louis Carabini (collectively,
3 “Defendants”) hereby request, pursuant to Federal Rule of Evidence 201, that this
4 Court take judicial notice of the following legislative and administrative materials,
5 which are attached hereto as Exhibits 1 through 10:

- 6 1. Hearing to Review Implications of the *CFTC v. Zelener* Case: Hearing
7 Before the Subcomm. On Gen. Farm Commodities & Risk Mgmt. of
8 the H.R. Comm. on Agric., 111th Cong. 10.
- 9 2. CFTC Chairman Gary Gensler, Letter to Reps. Harkin and Chambliss
10 on U.S. Senate Committee on Agriculture, Nutrition and Forestry; and
11 attached Analysis of Proposed Over-the-Counter Derivatives Market
12 Act of 2009 (Aug. 17, 2009).
- 13 3. Restoring American Financial Security Stability Act of 2010, H.R.
14 4173, 111th Cong., 2nd Sess. § 742 (as passed by Senate, May 20,
15 2010).
- 16 4. 156 Cong. Rec. S3,348 (May 6, 2010) (Sen. Cantwell, introducing
17 § 753)).
- 18 5. Retail Commodity Transactions Under Commodity Exch. Act, 78 Fed.
19 Reg. 52426 (Aug. 23, 2013)) (“Final Interpretation”).
- 20 6. Retail Commodity Transactions Under Commodity Exch. Act, 76 Fed.
21 Reg. 77670-02 (December 14, 2011) (“Request for Comments”).
- 22 7. Interpretive Letter 85-2, *Bank Activities Involving the Sale of Precious*
23 *Metals* (CFTC Office of General Counsel), Comm. Fut. L. Rep. (CCH)
24 ¶ 22,673 (Aug. 6, 1985)).
- 25 8. April 5, 1985 CFTC Model State Commodity Code, Comm. Fut. L.
26 Rep. ¶ 22,568.
- 27 9. Retail Commodity Transactions Involving Virtual Currency, 82 Fed.
28 Reg. 60335 (December 20, 2017) (“Proposed Virtual Currency

1 Interpretation”).

2 10.Commodity Futures Trading Commission, Open Meeting on Five Final
3 Rule Proposals Under the Dodd-Frank Act (July 7, 2011) (relevant
4 excerpts).

5 Under Federal Rule of Evidence 201, a court shall take judicial notice “if a
6 party requests it and the court is supplied with the necessary information.” Fed. R.
7 Evid. 201(c)(2). A court may take judicial notice of a fact “not reasonably subject
8 to dispute because it: (1) is generally known within the trial court’s territorial
9 jurisdiction; or (2) can be accurately and readily determined from sources whose
10 accuracy cannot reasonably be questioned.” *Id.* at 201(b).

11 “Legislative history is properly a subject of judicial notice.” *Anderson v.*
12 *Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012). “Federal courts routinely take
13 judicial notice of the legislative history of both federal and California statutes.”
14 *Gonzales v. Marriott Int’l, Inc.*, 142 F. Supp. 3d 961, 968 (C.D. Cal. 2015). In
15 addition, “[j]udicial notice is appropriate for records and reports of administrative
16 bodies.” *U.S. v. 14.02 Acres of Land More or Less in Fresno Cnty.*, 547 F.3d 943,
17 955 (9th Cir. 2008) (internal quotes omitted); *see also Gonzales*, 142 F. Supp. 3d at
18 968 (same).

19 Items one through four above are materials from the legislative history of the
20 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-
21 Frank”). Items five through ten above consists of guidance issued by the
22 Commodity Futures Trading Commission concerning the Actual Delivery Exclusion
23 under Dodd-Frank. These legislative history and administrative materials are all
24 properly the subjects of judicial notice. *See Anderson*, 673 F.3d at 1094 n.1; *14.02*
25 *Acres of Land More or Less in Fresno Cnty.*, 547 F.3d at 955; *Gonzales*, 142 F.
26 Supp. 3d at 968. These documents are further authenticated in paragraph 67 of the
27 concurrently-filed Declaration of Neil A. Goteiner in Support of Defendants’
28 Opposition to the CFTC’s Motion for Preliminary Injunction.

1 For the foregoing reasons, Defendants respectfully request that this Court take
2 judicial notice of the materials attached hereto as Exhibits 1 through 10.

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4 Dated: February 20, 2018

FARELLA BRAUN + MARTEL LLP

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6 By: /s/ Neil A. Goteiner

7 Neil A. Goteiner

8 Attorneys for Defendants
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